

McBurnett v. Nebraskaland Tire, Inc.

Case Number

A-14-0949

Call Date

September 16, 2015

Case Time

1:30 PM

Case Audio

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Case Summary

A-14-0949, Danny McBurnett (Appellant) v. Nebraskaland Tire, Inc., a Nebraska corporation (Appellee/Cross-Appellant)

Scotts Bluff County, District Court Judge Leo Dobrovolny

Attorney for Appellant: Sterling T. Huff (Island & Huff Attorneys at Law, PC, LLO)

Attorney for Appellee/Cross-Appellant: Dan H. Ketcham, Michael L. Moran (Engles, Ketcham, Olson & Keith, P.C.)

Civil: Action for employment discrimination under Nebraska Fair Employment Practices Act.

Action Taken by Trial Court: The district court granted summary judgment in favor of Appellee/Cross-Appellant Nebraskaland Tire (NLT).

Assignments of Error on Appeal: Whether the district court err in 1) not properly reviewing the evidence; 2) determining McBurnett failed to show his monocular vision substantially limits his ability to see, work, or engage in any other major life activity when compared to most people in the general population; 3) granting summary judgment in favor of NLT; 4) not finding there were genuine issues of material fact that prevented summary judgment, and 5) not viewing the evidence in the light most favorable to appellant and not giving appellant the benefit of all reasonable inferences deducible from the evidence.

Assignments of Error on Cross-Appeal: Whether the district court err in finding 1) that McBurnett timely filed his suit arising out of an alleged demotion, 2) that McBurnett timely filed his suit arising out of an alleged failure to accommodate, and 3) that the accommodation issue was contained in the Nebraska Equal Opportunities Commission charge.

Extended Case Summary (for Educational Purposes):

A-14-0949 Danny McBurnett (Appellant) v. Nebraskaland Tire, Inc. (Appellee/Cross-Appellant)

District Court for Scotts Bluff County, Honorable Leo Dobrovolny

Attorneys: Sterling T. Huff (Island and Huff) for Appellant ' Dan H. Ketcham & Michael L. Moran (Engles, Ketcham, Olson & Keith) for Appellee/Cross-Appellant.

McBurnett, a middle-aged man, has been blind in one eye since he was 17 years old. He worked for Nebraskaland Tire (NLT) as an outdoor tire salesman. Part of his job involved

delivering tires to customers, and to do so he drove a company pickup truck or a company pickup truck with a large trailer attached to it. NLT knew of McBurnett's monocular vision at the time he was hired. After he was hired, however, NLT required him to obtain a 'medical card' from the Department of Transportation in order to drive the company pickup truck with the trailer attached. McBurnett was unable to obtain the card because of his vision. McBurnett brought an employment discrimination action against NLT under the Nebraska Fair Employment Practices Act alleging that NLT demoted him to a tire repair position after he was unable to obtain a medical card and refused to make a reasonable accommodation for him.

NLT moved for summary judgment, asserting various defenses. The district court found the action was timely filed and that McBurnett had preserved his issues in the preliminary administrative proceedings, but found he failed as a matter of law to present a prima facie case. In essence, it held that because McBurnett's monocular vision did not substantially limit him in a major life activity, it was not a disability and therefore did not merit the protection of the Nebraska Fair Employment Practices Act. The district court granted summary judgment in favor of NLT.

On appeal, McBurnett assigns that the district court erred in 1) not properly reviewing the evidence; 2) determining McBurnett failed to show his monocular vision substantially limits his ability to see, work, or engage in any other major life activity when compared to most people in the general population; 3) granting summary judgment in favor of NLT; 4) not finding there were genuine issues of material fact that prevented summary judgment, and 5) not viewing the evidence in the light most favorable to appellant and not giving appellant the benefit of all reasonable inferences deducible from the evidence.

NLT cross-appealed and assigns that the district court erred in finding 1) that McBurnett timely filed his suit arising out of an alleged demotion, 2) that McBurnett timely filed his suit arising out of an alleged failure to accommodate, and 3) that the accommodation issue was contained in the Nebraska Equal Opportunities Commission charge.

Case Location

Concordia University

Panel Text

Moore, Chief Judge, Pirtle and Bishop, Judges
